

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

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SEP 30 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket 92-155
Table of Allotments FM Broadcast)
Stations (Blair, Nebraska;) RM - 8020
Storm Lake, Perry, and)
Sac City, Iowa))

TO: Chief Allocations Branch

REPLY COMMENTS OF NORTHWEST IOWA BROADCASTING CORPORATION

Northwest Iowa Broadcasting Corporation ("Northwest") is the licensee of Station KAYL-FM, Storm Lake, Iowa, currently operating on Channel 268C1. Northwest, by its counsel, hereby submits these comments in opposition to the counterproposal of the Mahn Partnership seeking to substitute Channels 265A or 284A for 248A at Sac City, Iowa. As shown below, the change proposed for Sac City is not satisfactory, and Mahn's counterproposal should not be adopted.

1. BACKGROUND

In response to the Petition of Sunrise Broadcasting of Nebraska, Inc., the Commission has proposed in its Notice of Proposed Rule Making and Order To Show Cause, 7 FCC Rcd 4590 (1992), to modify the facility of KBWH(FM), Blair, Nebraska from Channel 292A to Channel 268C3 and to modify the license of KAYL-FM from Channel 268C1 to Channel 269C1. The change in Blair would also necessitate a modification of the license for KDLS-FM in

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Perry, Iowa from Channel 269A to Channel 286A, and the Commission has also proposed this change. In addition to the foregoing operating stations, the Blair proposal will also involve a change in the allocated but unapplied for channel in Sac City, Iowa. There, the present channel is 286A and Sunrise proposed to change that to Channel 265A.

In its Notice of Proposed Rule Making, the Commission proposed to put Channel 248A in Sac City rather than Channel 265A in order to protect a pending application for that channel for a different city. Two counterproposals were filed within the comment period. One, filed by Ames Broadcasting Company, sought to upgrade Station KCCQ(FM) in Ames and assign a new channel to Lake City, Iowa. Northwestern has no objection to the Ames's counterproposal and offers no comments on whether that proposal is appropriate or warranted by the public interest. We note, however, that the net result of the combined Blair and Ames proposal is to modify three existing stations: KDLS-FM in Perry, KAYL-FM in Storm Lake, and KDSN(FM) in Dennison, Iowa, in violation of established Commission policy. Columbus, Nebraska, 59 RR 2d 1184 (1986) (allocation changes will be approved which require no more than two existing stations to modify their frequencies).

In addition to the Ames proposal, an entity identified as the Mahn Partnership also filed a counterproposal seeking to remove the proposed channel 248A from Sac City and use it for a new station in Alta, Iowa, in Buena Vista County. Mahn suggests that

either 265A or 284A could be used in Sac City with a site restriction.

At the outset, Northwest would indicate that it has reached an agreement with the Blair proponents for reimbursement of its expenses. KAYL-FM, however, will not change from Channel 268C1 until Blair is licensed on Channel 268C3. In the event Blair decides not to proceed with the change, KAYL-FM will remain at its present channel and, as we understand it, the Commission will not change its allocations table. We note that KAYL-FM's continued operation on Channel 268C1 would not appear to affect the Ames counterproposal but would preclude the assignment of channel 265A to Sac City as proposed by Mahn.

2. ARGUMENT

The Mahn counterproposal seeks to use Channel 248A in Alta, Iowa rather than allocate that channel to Sac City, as proposed by the FCC. Mahn asserts that both Channel 265A and Channel 284A can be used in Sac City with site restrictions. While perhaps technically accurate, the site restrictions are so severe that they virtually guarantee the non-activation of a channel in Sac City or Sac County. The Commission has held that for an FM allotment proposal to be granted, there must be a reasonable expectation that a usable site is available which complies with the Commission's minimum spacing requirements. Cave City Kentucky, 7 FCC Rcd 1363 (MMB 1992), citing San Clemente, California, 3 FCC Rcd 6728 (1988). The engineering attached to Mahn's proposal illustrates how tightly the allocations would have to be

engineered in order to comply with the required mileage separations. As described in the engineering attached to this Reply, the area in which channel 284A could be used is approximately one square kilometer and is reduced further by the fact that it is intersected by two roads. Similarly, the area in which Channel 265A could be located is in an arc to the southwest of Sac City, 13.7 kilometers from the city of license. While this area is larger than that for 284A, the area is still small and far removed the largest community in the county. In both cases, moreover, compliance with the applicable mileage separations requires a location so far from Sac City that the available areas are at the outer limits of locations which would provide a city grade signal over Sac City.

In addition to affording only the most restricted opportunity for activation of the station in Sac City, the allocations proposed are so tightly engineered that they will also affect the flexibility of numerous other stations to modify their transmitter sites. As shown by Mahn in the tables to its engineering study, numerous stations have critical spacing to the proposed channels. These stations would be effectively precluded, in the event of an assignment of one or more of these channels, from relocating their transmitter at any site closer to the Sac City restricted antenna site.

It is also significant that these onerous restrictions are not being sought by a party who is proposing to activate a channel in Sac City and who may therefore be presumed to have made a determination that the restriction is feasible.

This technically restrictive proposal stands in sharp contrast to the use of Channel 248 which may be used in Sac City without any site restriction and imposes no burden on future applicants there or in any of the other communities which would be affected by the use of Channel 265A or Channel 284A. Similarly, because it has no site restriction, the antenna for Channel 248A may be situated where it would provide a premium signal to Sac City and the other residents of Sac County.

Mahn's proposal to assign these highly restricted channels to Sac City is required solely because Mahn wishes to activate a third station in Buena Vista County in which KAYL-FM is located. In addition to KAYL-FM, KTFG(FM) operates on Channel 275C2 in Sioux Rapids to the North. Sac County has a 1990 population of 12,324 people, with Sac City having 2,492 people. Buena Vista County has a total population of 19,965 with Alta having a population of 1,820. Since Buena Vista County already has two operating stations in Storm Lake and Sioux Rapids, while neighboring and only slightly smaller Sac County has no stations operating to meet its needs, it would be entirely inappropriate for the Commission to adopt Mahn's counterproposal which involves restrictions so severe that it is unlikely that the Sac allocation would ever be activated.

Mahn's proposal to add channel 265A in Sac City has another problem: that allocation would not meet the mileage separation required for KAYL-FM, which operates on channel 268C1 in Storm Lake. Mahn may be assuming that KAYL-FM will move to channel 269C1 if the Blair proposal is adopted but, as we understand the

Commission's procedures, KAYL-FM would have to change channels only if the Blair proposal is actually built. If the proponent there decides not to build, a decision which is not at all uncommon, as evidenced by the Sac City allocation, channel 268C1 would remain assigned to Storm Lake and would conflict with the use of channel 265A in Sac City.¹

For the foregoing reasons, it is respectfully suggested that the Commission reject Mahn's counterproposal to substitute channels 284A or 265A for channel 248 at Sac City, Iowa.

Respectfully submitted,

**NORTHWEST IOWA BROADCASTING
CORPORATION**

By: *Marnie K. Sarver*
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Its Attorneys

September 30, 1992

¹ Mahn has made no representation, as required for consideration of its counterproposal, that it would apply for the channel if allocated or that it would reimburse existing stations for expenses incurred as a result of necessary changes in their channels. This contravenes the Commission's established policy requiring such a statement:

[P]arties filing competing expressions of interest in cases which require channel changes by existing licensees to accommodate the new allotment are also required to state an intention to reimburse the affected parties. The absence of such a statement will render the expression of interest invalid.

Brookville, Pennsylvania, 65 RR 2d 493 (MMB 1988).

ENGINEERING STATEMENT

COMMENTS ON AREA-TO-LOCATE CONSTRAINTS

FM ALLOCATION AT SAC CITY, IA.

MM Doc. 92-155 RM 8020

**Hedberg Broadcast Group
Northwest Iowa Broadcasting Co., Inc.
Licensee of KAYL-FM, Storm Lake IA.**

September 29, 1992

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E-2, Area-to-Locate Map, Channel 248A, Sac City, IA.

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E-4, Area to Locate Map, Channel 265A, Sac City, IA.

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The filing of this engineering statement with the FCC constitutes acceptance of these terms and conditions by Hedberg Broadcasting Group, Northwest Iowa Broadcasting Co., Inc..

AFFIDAVIT

HENNEPIN COUNTY

STATE OF MINNESOTA

SS:

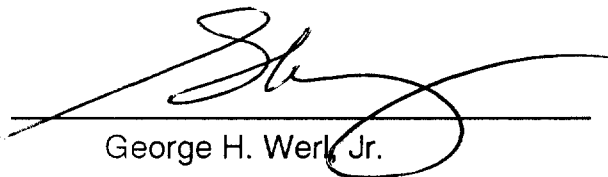
GEORGE H. WERL, JR., being duly sworn upon oath deposes and says:

That his qualifications are a matter of record with the Federal Communications Commission;

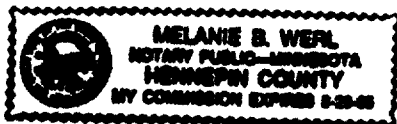
That he is President of Commsulting, Incorporated, a Minnesota corporation;

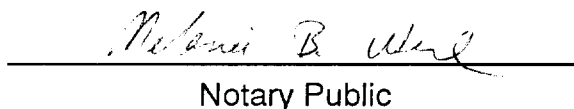
That Commsulting, Incorporated has been retained by Hedberg Broadcasting Group, Northwest Iowa Broadcasting Co., Inc., licensee of FM station KAYL-FM, Storm Lake, IA. to prepare this engineering statement;

That he has either prepared or directly supervised the preparation of all technical information contained in this engineering statement and that the facts stated in this engineering statement are true of his knowledge, except as to such statements as are herein stated to be on information and belief, and to such statements he believes them to be true.


George H. Werl, Jr.

Subscribed and sworn to before me on 9-29-92




Notary Public

My Commission expires 8/28/95

COMMENTS ON AREA-TO-LOCATE CONSTRAINTS FM ALLOCATION AT SAC CITY, IA.

MM Doc. 92-155 RM 8020

**Hedberg Broadcast Group
Northwest Iowa Broadcasting Co., Inc.
Licensee of KAYL-FM, Storm Lake IA.**

NARRATIVE STATEMENT: This engineering statement and exhibits have been prepared by George H. Werl, Jr., President of Commsulting, Inc., on behalf of Hedberg Broadcasting Group, Northwest Iowa Broadcasting Co., Inc., in accordance with the Rules and Regulations of the Federal Communications Commission. This engineering statement provides comments on the proposed rulemaking MM Doc. 92-155, RM 8020, to make a number of changes to the FM Table of Allotments, as well as to comment upon a counterproposal to the aforementioned proposed rulemaking filed by Margorie and Theodore Mahn.

In MM Doc. 92-155, RM 8020, the Commission proposes to make changes in the FM Table of Allotments to allocate the following:

Channel 268C3 in lieu of 292A at Blair, NE.

Channel 286A in lieu of 269A at Perry, IA.

Channel 269C1 in lieu of 268C1 at Storm Lake, IA.

Channel 248A in lieu of 286A, a vacant allotment at Sac City, IA.

In a counterproposal dated September 15, 1992, Margorie and Theodore Mahn ("Mahn") have suggested that channel 248A be allocated instead to Alta, IA., indicating that there are two other channels available for substitution at Sac City, IA. namely channels 265A and 284A. It is noted that each of these two substitute channels would require site restrictions at a substantial distance from Sac City. It is further noted that the use of channel 265A at Sac City is only allowable if the Commission decides to change the allocation at

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Storm Lake as proposed (that is, channel 269C1 in lieu of 268C1). At present, the allocation of channel 265A at Sac City is not permitted due to spacing constraints under FCC Rules 73.207.

Exhibits E-1 through E-4 depict the available area to locate for the various channels under study herein, given a maximized class A facility (6 KW. at 100 m. HAAT), compliant with spacing requirements towards all existing and proposed facilities under FCC Rules 73.207 and capable of providing 70 dbu service over the city of license as required under 73.315. Except as noted, actual terrain was not considered, the distance to the 70 dbu contour limit was assumed to be 16.4 Km. in all directions. The analysis for channel 265A reflects the proposed change in Storm Lake from channel 268C1 to 269C1.

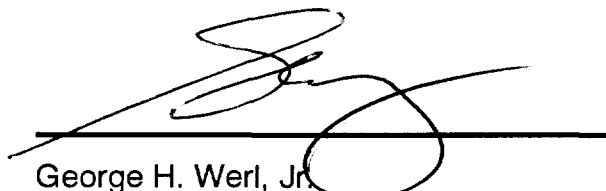
Inspection of Exhibit E-1, the analysis for channel 286A, shows ample area to locate an FM facility to serve Sac City. No site restriction from the reference coordinates of Sac City is required, the available area extends for several kilometers in all directions around Sac City and to the 70 dbu service contour limit to the East and Northeast. This represents the present situation currently provided to the community of Sac City.

Exhibit E-2, the analysis for channel 248A, the substitute channel proposed by the FCC in MM Doc. 92-155, RM 8020, shows a similar size area to locate an FM facility to serve Sac City. Again, no site restriction from the reference coordinates of Sac City is required, the available area extends to the 70 dbu service contour limit clockwise from Southwest to North-Northwest. For all practical purposes, the substitution of channel 248A in lieu of 286A at Sac City does not diminish the viability of finding a suitable site to construct a maximized class A FM facility for the community.

Exhibit E-3, the analysis for channel 284A, one of the substitute channels proposed by Mahn in it's counterproposal, depicts an extremely small area to the Northeast of Sac City, purportedly suitable to locate a proposed FM facility meeting FCC Rules 73.207 spacing requirements as well as providing 70 dbu service over Sac City as required by FCC Rules 73.315. The overall size of this area is perhaps one square kilometer. Additionally, it is noted that this extremely small area is at the intersection of two county roads, routes N28 and D15. The practical considerations of constructing a tower (foundations, guy anchors, etc.) compliant with local building regulations so close to public roadways would serve to further diminish the viable area to locate a proposed FM station. Finally, using the reference coordinates supplied by Mahn for the proposed channel 284A (42° 29' 50" N 94° 50' 41" W, in actuality slightly short spaced by 0.37 Km. towards KESY-FM), a study was made to locate the 70 dbu contour towards Sac City using actual data from the USGS

terrain database. The reference coordinates of the proposed channel 284A allocation site are 15.73 Km. distant from the reference coordinates for Sac City. The HAAT over the radial of interest (237°) for a maximized class A facility (6 KW. at 100 m. HAAT) from the proposed allocation site towards Sac City is 98.3 meters. According to the FCC F(50,50) curves, the predicted distance to the 70 dbu contour for this power and HAAT is 16.0 Km. The conclusion to be drawn from this analysis is that the available area to locate may be insufficient to actually construct a facility on channel 284A capable of providing the required 70 dbu service over the entire corporate boundary of Sac City.

Exhibit E-4, the analysis for channel 265A, the other substitute channel proposed by Mahn in its counterproposal, depicts a narrow, crescent shaped area to the Southwest of Sac City, suitable to locate a proposed FM facility meeting FCC Rules 73.207 spacing requirements as well as providing 70 dbu service over Sac City as required by FCC Rules 73.315. Again using the reference coordinates supplied by Mahn for the proposed substitute channel 265A (42° 22' 18" N 95° 09' 30" W), a study was made to locate the 70 dbu contour towards Sac City using actual data from the USGS terrain database. The reference coordinates of the proposed channel 265A allocation site are 13.72 Km. distant from the reference coordinates for Sac City. The HAAT over the radial of interest (67°) for a maximized class A facility (6 KW. at 100 m. HAAT) from the proposed allocation site towards Sac City is 113.1 meters. According to the FCC F(50,50) curves, the predicted distance to the 70 dbu contour for this power and HAAT is 17.4 Km. Favorable terrain may therefore increase distance to the 70 dbu contour somewhat over the 16.4 Km. initial assumption depending upon the particular site selected, thus providing some additional area to locate. This possible additional area has been depicted on the Exhibit E-4 map as a terrain augmented 70 dbu contour limit. Exact determination of the total area available to locate an FM facility capable of providing the required service over Sac City would require averaging the terrain analysis over numerous sites, although there appears to be an estimated 51.8 to 64.7 square kilometers available. This is still, however, only a fraction of the area to locate currently available to a prospective applicant at Sac City under the present channel 286A allocation or following the rulemaking proposed by the Commission in MM Doc. 92-155, RM 8020, substituting channel 248A.



George H. Werl, Jr.
President, Commsulting, Inc.

CERTIFICATE OF SERVICE

I, Jette Ward, a secretary with the law firm of Reed Smith Shaw & McClay, hereby certify that on this 30th day of September, 1992, a true and correct copy of the foregoing "**REPLY COMMENTS OF NORTHWEST IOWA BROADCASTING CORPORATION**" was sent via United States first-class mail, postage prepaid, or hand delivery, to the following:

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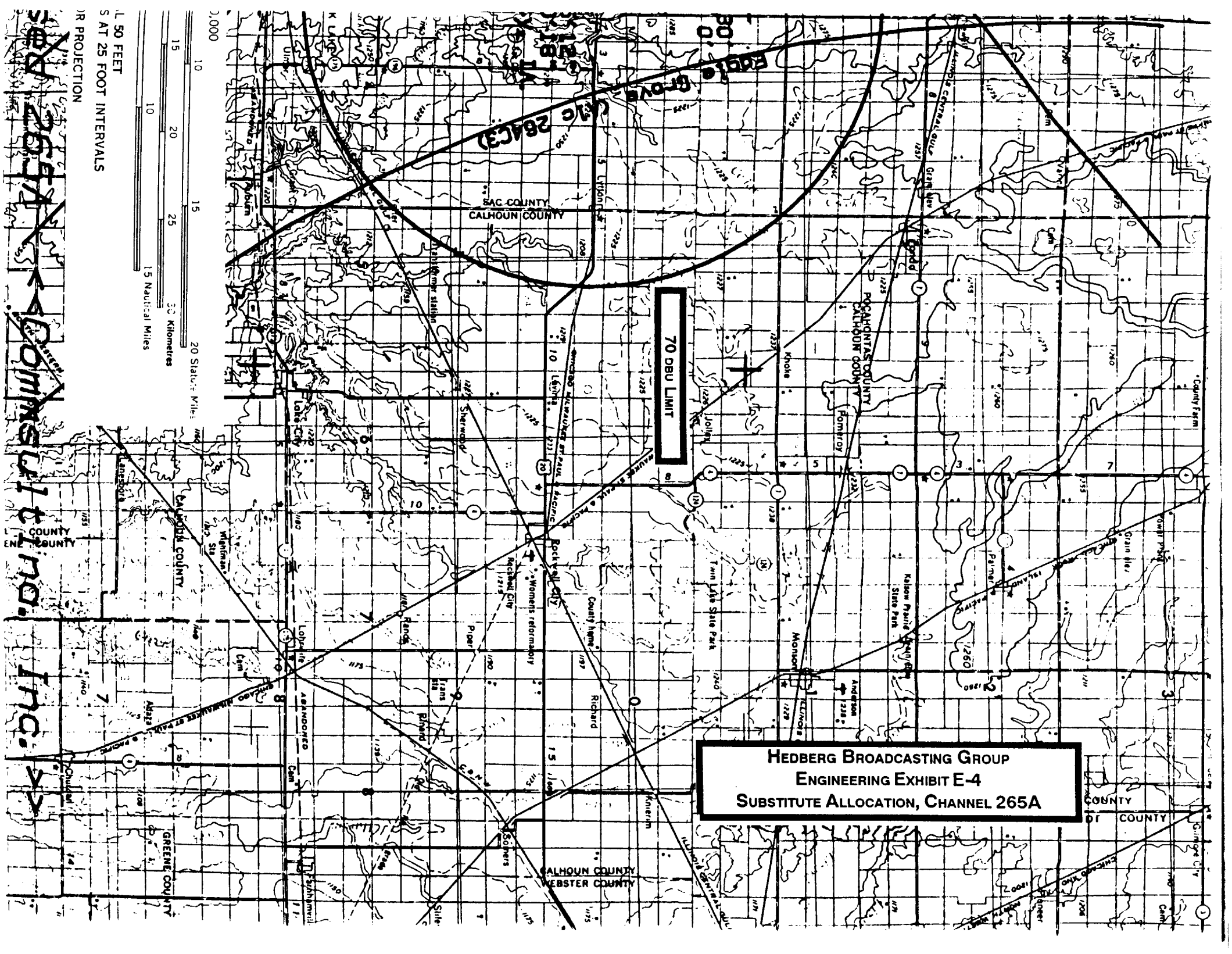
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Ms. Marjorie K. Mahn
Mahn Partnership
RR 1 303 540th Street
Alta, Iowa 51002


Jette Ward

* Hand Delivery



70 DBU LIMIT

HEDBERG BROADCASTING GROUP
ENGINEERING EXHIBIT E-4
SUBSTITUTE ALLOCATION, CHANNEL 265A

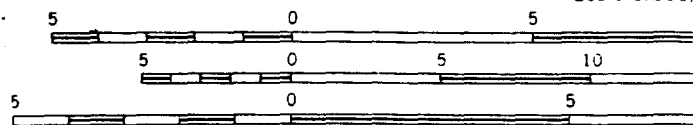
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OR PROJECTION

Commercial Inc. >>

HEDBERG BROADCASTING GROUP
ENGINEERING EXHIBIT E-4
SUBSTITUTE ALLOCATION, CHANNEL 265A

AUGMENTED 70 DBU LIMIT

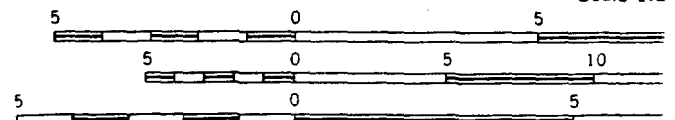


CONTOUR INTERVAL
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ALS Plot FOR Soc City, IA. PPDOS

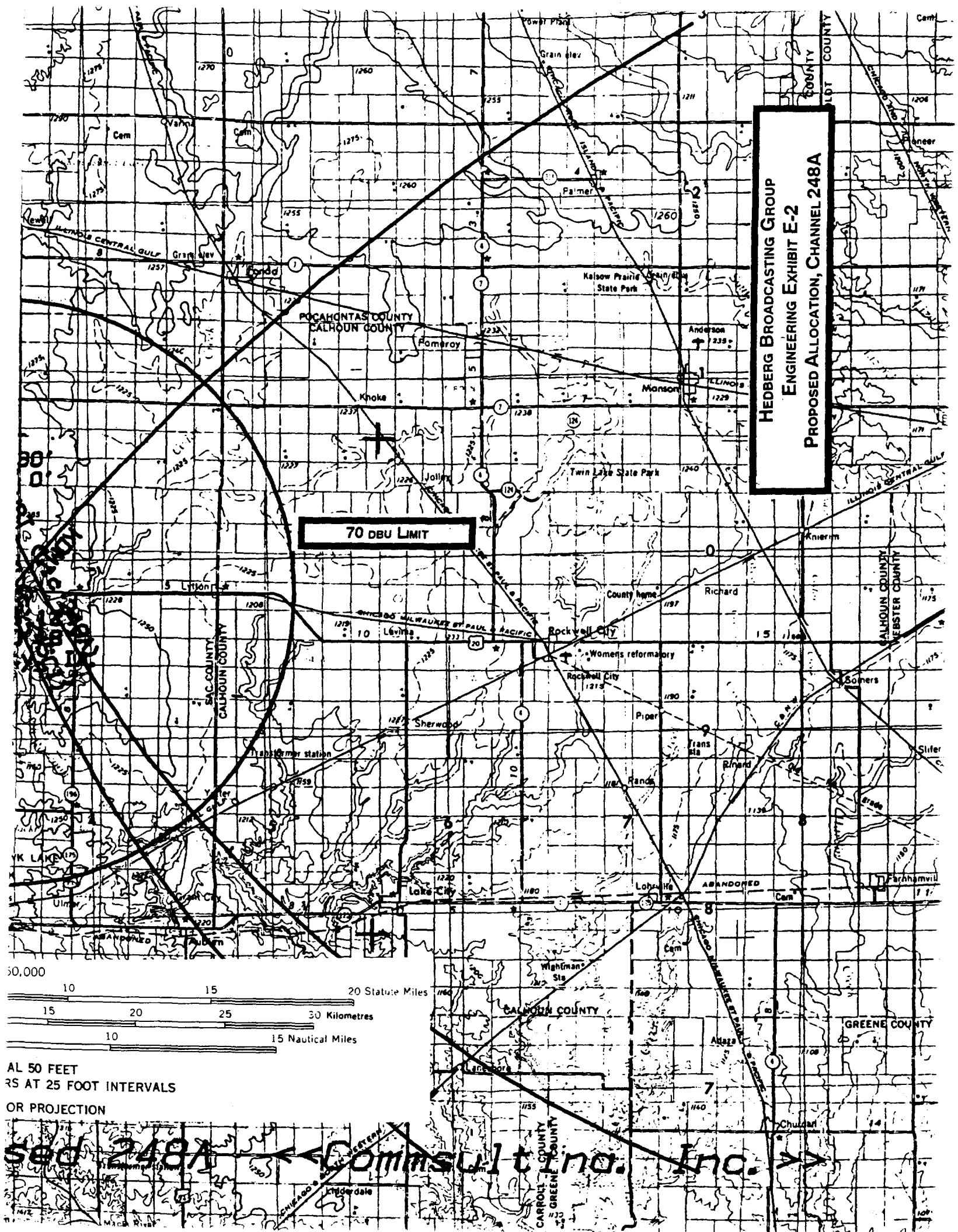
HEDBERG BROADCASTING GROUP
ENGINEERING EXHIBIT E-1
PRESENT ALLOCATION, CHANNEL 286A



CONTOUR INTERVAL
WITH SUPPLEMENTARY CONTOUR

TRANSVERSE MERCATOR

ALS Plot FOR Sac City, IA. PRODD



HEDBERG BROADCASTING GROUP
ENGINEERING EXHIBIT E-2
PROPOSED ALLOCATION, CHANNEL 248A

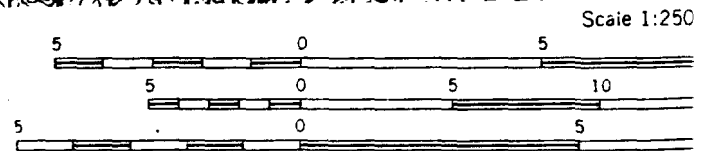
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sed 248A <<Consulting, Inc. >>

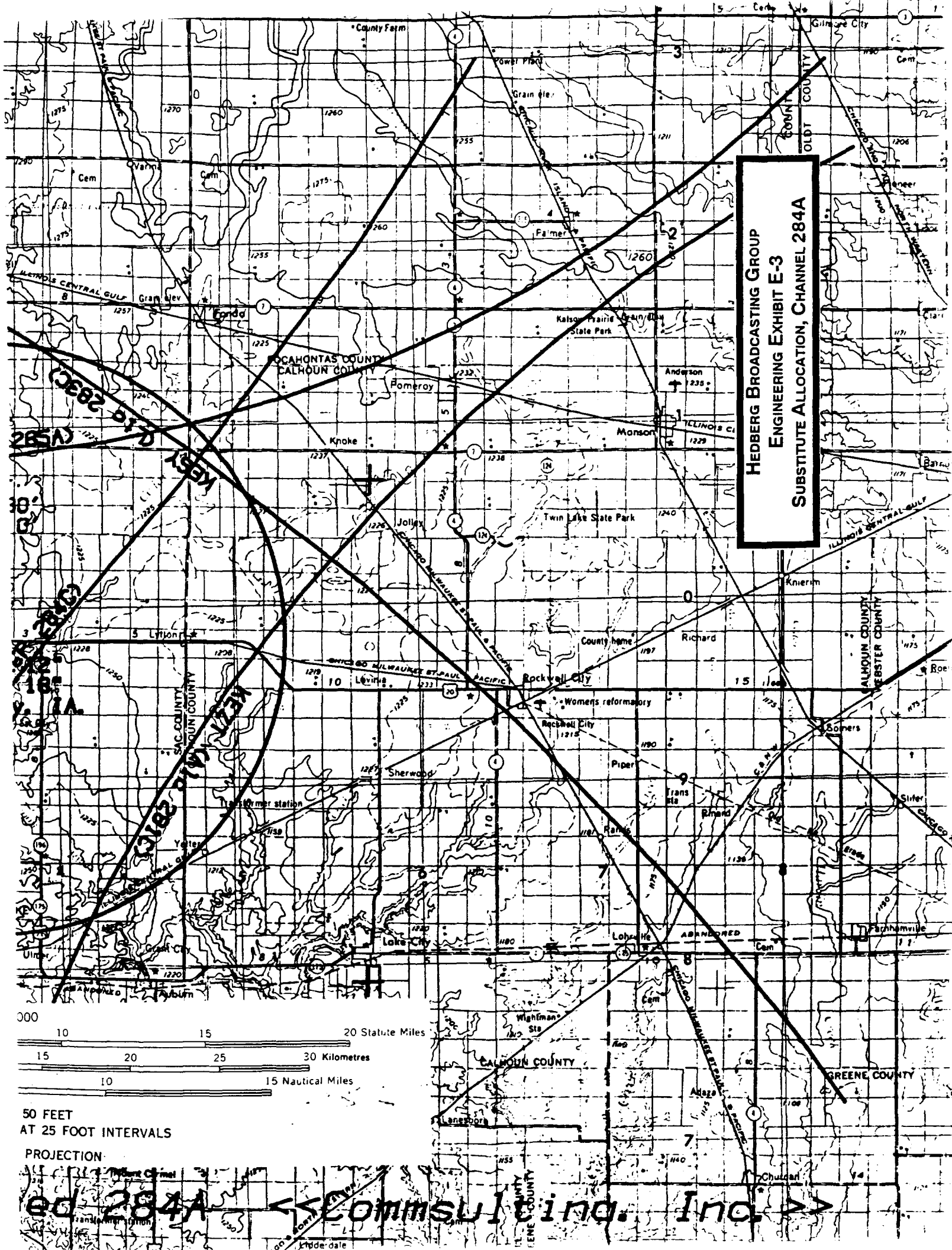
HEDBERG BROADCASTING GROUP
ENGINEERING EXHIBIT E-2
PROPOSED ALLOCATION, CHANNEL 248A



CONTOUR INTERVAL
WITH SUPPLEMENTARY CONTOURS

TRANSVERSE MERCATOR

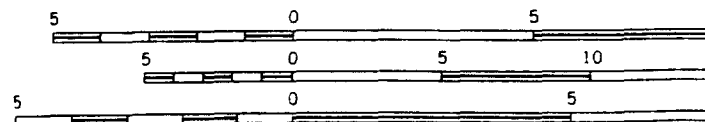
ALS Plot FOR Soc City, IA. PROPOSED



HEDBERG BROADCASTING GROUP
ENGINEERING EXHIBIT E-3
SUBSTITUTE ALLOCATION, CHANNEL 284A

70 DBU LIMIT

Scale 1:250,000



CONTOUR INTERVAL 10
WITH SUPPLEMENTARY CONTOURS AT 5

TRANSVERSE MERCATOR PROJECTION

ALS Plot FOR Soc City, IA. Producers